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In re Application of
HUNT, Simon : DECISION ON PETITION
U.S. Application No. 09/762,852 : UNDER 37 CFR 1.47(b)
PCT No.: PCT/GB99/02665 :
Int. Filing Date: 12 August 1999 :
Priority Date: 14 August 1998 :
Attorney Docket No.: 0234/00070 :
For: INTERACTIVE SYSTEM FOR :
ENABLING TV SHOPPING :

This decision is in response to "RENEWED PETITION UNDER 37 CFR 1.47(b)" filed 02 January 2002. In a decision dated 26 September 2001 the "PETITION UNDER 37 CFR 1.47(b))" filed 12 July 2000 was dismissed because: (1) applicant did not provide adequate proof that the inventor, Simon Hunt, refused to execute the application or could not be reached after diligent effort and (2) applicant did not provide an oath or declaration executed by the 37 CFR 1.47(b) applicant on behalf of and as agent for the nonsigning inventor.

DISCUSSION

A petition under 37 CFR 1.47(b) must be accompanied by: (1) the requisite petition fee under 37 CFR 1.17(i); (2) factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort; (3) a statement of the last known address of the nonsigning inventor; (4) an oath or declaration executed by the 37 CFR 1.47(b) applicant on behalf of and as agent for the nonsigning inventor; (5) proof of proprietary interest in the application; and, (6) a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damages. The 37 CFR 1.47(b) applicant has satisfied the requirements of items (1), (3), (4), (5) and (6) above. However, items (2) has not been satisfied.

Regarding Item (2), section 409.03(d) of the Manual of Patent Examining Procedure (M.P.E.P.), **Proof of Unavailability or Refusal**, states, in part:

Where a refusal of the inventor to sign the application papers is alleged, the circumstances of its refusal must be specified in an affidavit or declaration by the person to whom the refusal was made. Statements by a party not present when an oral refusal is made will not be accepted.

Before a refusal can be alleged, it must be demonstrated that a *bona fide* attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the nonsigning inventor for signature.

When there is an express oral refusal, that fact along with the time and place of the refusal must be stated in the affidavit or declaration. When there is an express written refusal, a copy of the document evidencing that refusal must be made part of the affidavit or declaration.

When it is concluded by the 37 CFR 1.47 applicant that a nonsigning inventor's conduct constitutes a refusal, all facts upon which the conclusion is based should be stated in an affidavit or declaration. If there is documentary evidence to support facts alleged in the affidavit or declaration, such evidence should be submitted. Whenever a nonsigning inventor gives a reason for refusing to sign the application oath or declaration, that reason should be stated in the affidavit or declaration.

A review of the present petition and papers reveal that petitioner has not provided sufficient proof that the non-signing inventor refuses to execute the application. Petitioner has provided correspondence from Howard Milhenc which state that, "the position is that Simon did not refuse to sign. He said that would sign (you have had a copy of this letter), but then involved his lawyers . . ." As stated in the previous decision, has counsel's client, Media Logic Systems (Nisaba Group Ltd.), received inquires from Mr. Hunt or his solicitor regarding the patent papers? As stated above, when there is an express oral refusal, that fact along with the time and place of the refusal must be stated in the affidavit or declaration. When there is an express written refusal, a copy of the document evidencing that refusal must be made part of the affidavit or declaration.

Regarding Item (4), an oath or declaration executed by the 37 CFR 1.47(b) applicant on behalf of and as agent for the nonsigning inventor has been provided.

For the reasons stated above, it would not be appropriate to accept the application without the signature of Simon Hunt under 37 CFR 1.47(b) at this time.

CONCLUSION

The renewed petition filed under 37 CFR 1.47(b) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO MONTHS** from the mailing date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(b).

Please direct any further correspondence with respect to this matter to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the Legal Affairs Division of the PCT Legal Office.



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